

Article

Democracy-driven Transformation to Regulatory State: The Case of Taiwan

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ABSTRACT

Like some other new democracies, Taiwan has transformed from a developmental state to a regulatory state with increasing procedural rationality and substantive legal controls. However, the driving forces for such a profound change and its consequences remain to be explored further and addressed against the backdrops of Taiwan's development context as well as the global trend. This paper argues that the shift to regulatory state took place in Taiwan not as a result of explicit government policies, but as an inevitable consequence of democratization. Major legislation facilitating the forming of a regulatory state was introduced in the backdrop of democratization in the 1990s in parallel with certain pressures from international network. Increasing judicial controls over regulatory matters were made possible by legislative enactments triggered by democratization. More importantly, institutional constraints on the regulatory state bears strong procedural nature as demonstrated by both major legislation and court rulings. This process-centric feature enjoys the potency of developing a dialectic regulatory environment that may possibly prevents the risk of judicialization while reinforcing more open and deliberative democratic governance.

Keywords: *Judicialization, Developmental State, Regulatory State, Pro-dialogue Courts*

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I. INTRODUCTION

In the 1960s and 70s, the developed world led by the United States sought to modernize the developing world by promoting industrialization and rule of law.¹ Many Asian states, including Taiwan, received extensive U.S. aid and modernized many of their institutions.² These developmental states were phenomenally successful, and produced the Asian economic miracle.

While contributing to economic success in Taiwan, modernization efforts did not successfully substantiate the rule of law as envisaged. Indeed, the phenomenal economic development was achieved under an authoritarian regime that extended strong control over society. Law and legal institutions became instrumental, serving the development-driven authoritarian regime but not constraining it. In this context, modernization efforts contributed to the formation of a developmental state that favored economic growth to rule of law, social stability to open democracy.³

In the last decade or so, many Asian countries began to depart from the developmental state model, exhibiting a transformation from unfettered regulatory discretion to more legal and procedural constraints. Among them, Taiwan is iconic in her illustrative development path from a “milk cow” base for launching national recovery in the 50’s, through the in situ economic

1. In December 19, 1961, the General Assembly of the United Nation (UN) adopted Resolution 1710 (XVI) that designate [d 1960s] as the United Nations Development Decade, “in which Member States and their peoples will intensify their efforts to mobilize and to sustain support for the measures required on the part of both developed and developing countries to accelerate progress towards self-sustaining growth of the economy of the individual nations and their social advancement.” United Nations Development Decade: A Programme for International Economic Co-Operation, G.A. Res. 1710, 17 U.N. GAOR, 16th Sess. (Dec. 19, 1961) (XVI). This effort echoed the foreign policies of Kennedy administration (1961-1963). Not only President John F. Kennedy himself in a speech addressed to the UN called for the designation of 1960s as the United Nations Development Decade, but the Agency for International Development (AID), the major agency in charge of international assistance, was also established during this period of time.

2. The assistance to Taiwan from the United States re-started in 1950s after the cold-war begun. From 1950 to 1965, the amount of U.S. economic aid received by the Kuomintang (hereinafter *KMT*) administration, military assistance not included, reaches 1.5 billion dollars, which amounts to 6% of the total GNP and 40% of the total investment at the time.

3. The model of developmental state applies not only to Taiwan, but also to many other Asian developing countries. See Kanishka Jayasuriya, *Introduction: A Framework for the Analysis of Legal Institutions in East Asia*, in *LAW, CAPITALISM AND POWER IN ASIA: THE RULE OF LAW AND LEGAL INSTITUTIONS* 1-27 (Kanishka Jayasuriya ed., 1999). The economic development of Japan in 1980s is an early example of how a developmental state contributes to rapid economic growth. See generally CHALMERS JOHNSON, *MITI AND THE JAPANESE MIRACLE: THE GROWTH OF INDUSTRIAL POLICY 1925-75* (1982) (arguing that the economic growth of Japan in 1980s was created by cooperation between Ministry of International Trade and Industry, the government and bureaucrats, as well as the heavy industry).

development in the 70's and 80's, followed by democratic transition since the mid 80's.⁴ Major legislation directed to procedural rationality and greater regulatory controls has begun shaping a regulatory environment that leans toward being more transparent, participatory and even deliberative. Legal institutions, lawyers and due process have become much more noticeable in policy making. In the recent years, national leadership positions have been occupied by renowned lawyers including current President Ma Ying-Jeou, ex-President Chen Shui-Bian, ex-Vice President Annette Lu, ex-Premier Frank Hsieh Chang-Ting, ex-Premier Su Tseng-Chang, and ex-Premier Chang Chun-Shun, among others. This impressive concentration of lawyers in high government positions is unusual even for advanced democracies.⁵

What has driven this transformation, however, is not yet clear and in need of sound explanation. One possible answer is that Asian states, including Taiwan have simply become less development-driven and shifted their focus somehow. But this rather straightforward answer fails to account for when and why this change occurred. An alternative explanation, by contrast, would look into the dynamics of these developments and identify –even compare– forces of change contributing to this transformation. Democratization, for example, may trigger institutional changes that provide substantive and procedural controls over regulatory authorities while at the same time empowering civil society. To an important degree, progress made in the process of democratization process may entail a transition from a developmental state model to a regulatory state. But are these two the same or different? In what ways and to what extent are these two transitions –one political the other regulatory– the same transition or different two transitions?

In this paper, I present two models of governance, the developmental state and regulatory state, and compare their institutional and operational aspects. This comparison is followed by an analysis into the driving forces behind the transition, with special attention to the democratization process beginning in the late 1980s. It concludes with the process-centric character of the transformation, providing strong impetus for democratic consolidation in modern regulatory state.

4. See Jiunn-Rong Yeh, *Institutional Capacity-Building toward Sustainable Development: Taiwan's Environmental Protection in the Climate of Economic Development and Political Liberalization*, 6 DUKE J. COMP. & INT'L L.L. 229, 233-35 (1996).

5. In fact, three out of five Premiers in Democratic Progressive Party (hereinafter DPP) administration, including incumbent Premier Chun-Shun Chang and former Premier Frank Chang-Ting Hsieh (Feb., 2005–Jan., 2006) as well as Tseng-Chang Su (Jan., 2006–May, 2007), were lawyers before they became political figures.

II. FROM THE DEVELOPMENTAL STATE TO THE REGULATORY STATE

In the past five decades or so, Taiwan has gone through the developmental state phase, and, with the vigor of a more open and democratic society, moved toward a regulatory state model. This section of the paper depicts these two distinct pictures of Taiwan: one as a developmental state before 1987; the other as a fledgling regulatory state after 1987. These institutional and operational aspects are often reflected in various legal or policy instruments by the legislative, judicial or administrative branches. Beyond state powers, whether and to what extent civil society establishes any relationship—formal or informal—with state apparatus is equally important for observation.

A. *Picturing the Developmental state before 1987: Technocracy, Modernization and Development*

The record of rapid economic growth Taiwan made during the 1980s is commonly referred as miraculous. Development-oriented policies, government enterprises, close—or even tightly controlled—relationships between government and corporations were the primary attributes.⁶

A developmental state operates at two levels: institutional and operational. Institutionally, it favors technocrats for public governance⁷ and finds the legal regime and its main players—lawyers—hostile or at least unfriendly.⁸ Courts, bar associations and law schools are not at the center of policy-making or management in a developmental state.⁹ At the operational

6. Chalmers Johnson, one of the pioneers of the concept of capital developmental state, provided more detailed explanations for how the system works. See CHALMERS, *supra* note 3, at 17-34; Chalmers Johnson, *Political Institutions and Economic Performance: The Government-Business Relationship in Japan, South Korea, and Taiwan* (hereinafter *Political Institutions and Economic Performance*), in THE POLITICAL ECONOMY OF THE NEW ASIAN INDUSTRIALISM 145 (Frederic C. Deyo eds., 1987).

7. See CHALMERS, *supra* note 3, at 20-21; *Political Institutions and Economic Performance*, *supra* note 6, at 142.

8. The KMT administration on the one hand kept the national bar exam pass rate under 1%, which reached a historical low 0.34% in 1982, but on the other hand allowed retired military judges, who were generally more obedient to the KMT regime, to enter the bar. For the post-war development of bar exam in Taiwan, see Chih-Chieh Lin, *Reforming Legal Education and Bar Exam in Taiwan—Centering on the Core Values of Lawyering and Establishing the Internship Program*, 2(3) KUOCHIA CHIANGYIN CHIKAN (NAT'L ELITE Q.) 79, 84-7 (2006) (in Chinese).

9. See John K. M. Ohnesorge, *Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience*, 28 U. PA. J. INT'L ECON. L. 219, 259-60 (2007). The state might even influence the judicial system by controlling the promotion or rotation rules of judges. See generally J. Mark Ramseyer & Eric B. Rasmusen, *The Case for Managed Judges: Learning from Japan after the Political Upheaval of 1993*, 154 UNIV. PENN. L. REV. 1879 (2006) (arguing that

level, a developmental state focuses on economic development as the primary goal of state policy, emphasizing public construction and moving up the technological ladder over goals of social welfare and equal distribution. Hardware expenditure is disproportionately higher than its software counterpart.

1. *Legislation*

Up until 1987, Taiwan was under Martial Law¹⁰ and the constitutionally authorized period of “Mobilization for Suppression of the Communist Rebellion.”¹¹ During this period, legislation mostly served as an instrument of political control for the party-state. Most importantly, several pieces of legislation provided for strict economic controls in the name of mobilization.¹² Major utilities and government enterprises were granted either monopolies or certain privileged status via legislative enactments and official endorsements. This established the official way by which government resources poured into those sectors that were either owned by government or closely affiliated with it.¹³ The developmental state during this period was directly engaged in economic development with the strong hand of the government. In this sense, the developmental state in Taiwan was a state undertaking development, rather than a state facilitating

Japanese politicians managed to control the judicial system by controlling the rotation rules of lower court judges).

10. The Martial Decree declared in 1949 was lifted on July 15, 1987.

11. The period was formally terminated in May 1991 when the “Temporary Provisions Effective During the Period of Communist Rebellion” were abrogated and the Constitution was revised with the additional articles.

12. See Jiunn-Rong Yeh, *Constitutional Reform and Democratization in Taiwan: 1945-2000*, in TAIWAN’S MODERNIZATION IN GLOBAL PERSPECTIVE 47, 49-50 (Peter Chow ed., 2002).

13. Although all characterized as developmental states by Chalmers Johnson, Ziya Onis indicates that the relationship between the government and the private sector in Taiwan differs from those in Japan and Korea. Chalmers Johnson argues that close cooperation and interaction among politicians, bureaucrats, and business are the basis of developmental state, which could be observed in Japan, Korea, and Taiwan. See Chalmers, *supra* note 6, at 145. By referring to Robert Wade, however, Onis points out that a clear cleavage exists between the government and the private sector in Taiwan. Links between government and business are weak, and industrial policy in Taiwan has been implemented through “a rigorous but very different type of policy network linking the central economic bureaus with public enterprises, public banks, public research and service organizations, universities, foreign multinationals with operations in Taiwan, consulting firms, and some ‘special status’ private manufacturing companies linked to the party, military, and economic ministries.” Ziya Onis, *The Logic of the Developmental State*, 24(1) COMPARATIVE POLITICS 109, 118 (1991) (reviewing Alice H. Amsden, *Asia’s Next Giant: South Korea and Late Industrialization* (1989); *The Political Economy of the New Asian Industrialism* (Frederic C. Deyo eds., 1987); Chalmers Johnson, *MITI and the Japanese Miracle* (1982); Robert Wade, *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization* (1990)).

development.¹⁴

Other than legislative instruments that entrenched government entities into particular economic sectors, formal legislative authorization was minimal. Development policies were mainly incarnated in policy statements and administrative regulations without any need for prior legislative authorization. There was no need in developing any legitimacy theory for administrative governance. Legislative enactments were used mainly to establish government or quasi-government entities and to grant them official status. In this way, legislative functions in a developmental state were rather limited but mainly provide tax incentives, funding and human resources.¹⁵

2. *Judicial Adjudication*

Legal institutions did not play a prominent role in the developmental state. In Taiwan, the Constitutional Court (the Council of Grand Justices) was created in the late 1940's and continued to function throughout the authoritarian period. But the Court hardly exercised meaningful constitutional supervision before the 1980s, in part due to the three-fourths vote threshold to render constitutional interpretations, as well as the larger political environment.¹⁶

Similarly, the Administrative Court was established very early in the authoritarian period and the Administrative Litigation Act had been effective for a long time. These institutions, however, provided only limited checks on the bureaucracy before 1987. Despite permitting individual litigation against administrative agencies, administrative litigation was limited to challenges against concrete administrative acts, so many issues were non-justiciable.¹⁷ The Administrative Court had limited capacity, with only one instance. The Court was not very aggressive in nullifying or suspending administrative

14. See Onis, *supra* note 13, at 118.

15. In order to attract foreign investment, for example, the Act to Facilitate Investment was promulgated to provide tax incentives and assistance in the form of land or financial support.

16. See Wen-Chen Chang, *The Role of Judicial Review in Consolidating Democracy: the Case of Taiwan*, 2 ASIA L. REV. 73, 74-75 (2005). See also Jiunn-Rong Yeh, *The Function of Constitutional Interpretations by Council of Grand Justice: 1949-1998*, 28(2) TAI TA FA HSUEH LUN TSUNG I (NAT'L TAIWAN U. L. REV.) (1999) (in Chinese).

17. In the past, to initiate administrative litigation required the existence of concrete administrative act which infringes the legal status of individuals. Therefore, pure notification of existing facts, the issuance of administrative regulations, ordinances and directives, or any other administrative act which does not attempt to specifically influence individual's legal status, even though it creates factual damages like the loss of property or collateral disadvantages such as the increase of business cost, cannot be argued in front of the administrative court. The adoption of the State Compensation Act in 1980 is definitely an improvement, but not until 1998 had the administrative litigation system undergone major revisions. See *infra* note 18 and accompanying text.

acts; the exceptional cases in which the Court did so primarily concerned tax exemptions or regulatory fees with minor policy significance.

In 1980, the State Compensation Act was enacted to provide compensation for government wrongdoings. The Act represented, to certain extent, a response to the emergence of rights consciousness in the middle-class after two decades of rapid economic growth. Certain grievances, particularly concerning consumer and environmental protections, were addressed. But the Act had rigid conditions and required a cumbersome process, so it functioned as neither effective nor sufficient checks with government powers.¹⁸

In sum, before 1987, legal institutions were in place but their functions were highly constrained. Judges, despite their quality and professional training, were largely seen as part of the bureaucracy. In a developmental state, the bureaucracy including the judiciary was conceived of as serving developmental purposes, and judicial independence in its institutional sense was minimal, if not a myth.¹⁹

3. *Executive Control*

In a developmental state, policy making is inevitably dominated by the technocracy. Before 1987, Taiwan was both a party state and a developmental state. The decision-making center was, not surprisingly, the Kuomintang party apparatus and in the Executive Yuan, both of which were mainly occupied by the same group of technocrats. In the 1970s and 80s, premiers (Presidents of the Executive Yuan in Taiwan's constitutional system) were either of military background or well-trained agricultural or industrial engineers or economists, a clear sign of a developmental state.²⁰

In the internal operation of the Executive, the budget was allocated strongly in favor of visible hardware construction at the expense of social security and distributive justice. The authorities also put a strong hand in steering the focus of industrial development by identifying major critical industries, providing incentives and necessary assistance through policy announcement or programs. The widespread installation of industrial parks or import-export free zones is typical example of this pro-development

18. See Jiunn-Rong Yeh, *The Spillover of State Liability: A General Review on the State Compensation Act*, 24(2) TAI TA FA HSUEH LUN TSUNG (NAT'L TAIWAN U. L. REV.) 123, 137-40 (1995) (in Chinese).

19. See Ohnesorge, *supra* note 9, at 258-59.

20. Premiers Yu Kou-Hwa and Sun Yun-Hsuan were the best examples of this feature.

industrial policy.²¹

4. *Civil Society*

Authoritarian regimes rarely support, and usually suppress, civil society. To the extent that civil society includes business organizations and labor unions, a developmental state must manipulate its relationship with these organizations, treating them as instrumental to state-centered development. Taiwan before 1987 was often described as a corporatist state, in which the party-state extended and entrenched its influence over civic and business organizations, professional associations and academic institutions.²² Not until the mid-1980s had voluntary social organizations begun burgeoning.²³ Even the National Bar Association was controlled by lawyers who had served as military judges. This was the legacy of the notorious “back door” policy for admitting lawyers: the national bar exam admitted less than one percent of the applicants who graduated from law schools, while creating a “back door” channel for far larger numbers of retired military judges or senior bureaucrats to enter the bar each year.²⁴

B. *Picturing the Regulatory State after 1987: Democratization, Rule of Law and the Regulatory State*

The year 1987 was a watershed in the history of Taiwan. It was the year

21. The best example might be the installation of Hsin-Chu Science Park in December 15, 1980, which has become one of the world's most important areas for semiconductor manufacturing. Both Taiwan Semiconductor Manufacturing Company (TSMC) and United Microelectronics Corporation (UMC), the world's top two semiconductor foundries, are located in this area.

22. The term Corporatism often refers to different types of socio-political relationship. By referring to Mihail Manoilesc, Philippe C. Schmitter in his seminal work “Still the Century of Corporatism?” distinguishes between societal corporatism, in which “the legitimacy and functioning of the state were primarily or exclusively dependent on the activity of singular, noncompetitive, hierarchically ordered representative corporations,” and state corporatism, in which “similarly structured corporations were created by and kept as auxiliary and dependent organs of the state which founded its legitimacy and effective functioning on other bases.” Philippe C. Schmitter, *Still the Century of Corporatism?*, 36(1) THE REV. OF POL. 85, 102-3 (1974). Taiwan before democratization has long been seen as a typical example of state corporatism. See HARMON ZIEGLER, PLURALISM, CORPORATISM, AND CONFUCIANISM: POLITICAL ASSOCIATION AND CONFLICT REGULATION IN THE UNITED STATES, EUROPE, AND TAIWAN (1988). Remains of state corporatism could still be seen today. For example, courses of military training and the office of military training, which is occupied by retired military officers, still exist in every university today.

23. The major opposition party, Democratic Progressive Party (DPP), was established on September 28, 1986. Before the formation of DPP, political opposition was generally labeled as “outside-the-party (Tangwai),” a loosely defined political coalition.

24. Interestingly, the first year when the number of people passing the bar exam exceeded 100 was 1987, the year when the Martial Law was lifted. See Lin, *supra* note 8, at 86.

when the Martial Law Decree was lifted, political liberalization began, and cross-straits contacts were reopened. Parallel to these profound changes in the political sphere, Taiwan also underwent a transition from the developmental state to a more open regulatory state despite certain disorientation.

In a regulatory state, it is the private sector that takes the lead in development while the government's role is to maintain a free and fair market with legal enforcement.²⁵ A regulatory state is not, or at least not necessarily, a capitalist state. It may be a welfare state, where government regulations serve not only to police free market but also, more importantly, to render equitable redistribution.²⁶

A regulatory state also operates in two ways: institutional and operational. Institutionally, legally trained bureaucrats are more favored in the public sector. Because administrative decisions are always subject to review by courts, lawyers play a relatively more important role in the agencies. At the operational level, government policies focus on policing fair competition of the market on the one hand and enhancing public welfare on the other.²⁷ With economic development already having been achieved to a certain scale, equitable redistribution becomes a more acute issue. Economic growth and hardware expenditure no longer necessarily prevail as the dominant policies. As in the developmental state model, these institutional and operational managements may be analyzed through legal or policy instruments by the legislative, judicial or administrative branches, as well as a particular relationship between civil society and state apparatus.

1. *Legislation*

With the lifting of the Martial Law Decree, past repressive measures were suspended and replaced with more liberal rules. A series of new pieces

25. Chalmers Johnson contrasted the developmental state with the regulatory state such as the United States. In a regulatory state, private enterprises become main actors for economic development. The state attempts to regulate the market only when there is market failures or when private business deviate from established regulations. See CHALMERS, *supra* note 3, at 10.

26. See generally BRUCE ACKERMAN, RECONSTRUCTING AMERICAN LAW (1984) (arguing regulatory state was a necessary response to social crises in the 1930s).

27. New Deal is regarded as the starting point of both the regulatory state and modern welfare state. The coming of New Deal represents a clear left turn of the United States into the demand-side economy, which focuses on expanding public expenditure, controlling excessive competition, and pursuing full employment. See PETER GOUREVITCH, POLITICS IN HARD TIME 152 (1986). The result is, on the one hand, social security became one major issue on the political agenda. On the other hand, all these measures required a stronger and more active role of economic regulation which therefore led to the rise of modern regulatory state.

of legislation were passed, such as the revised Publication Act, the Assembly and Parade Act, the Maintenance of Public Order Act and the Media Broadcasting Act. The liberal tendency of new legislative enactments continued and was further strengthened with the ending of the period of “Mobilization for Suppression of the Communist Rebellion” in May 1991. This liberalizing and democratizing moment created an unprecedented institutional opportunity for the strong exercise of legislative powers.

Around this time, the Legislative Yuan, whose seats were finally opened for competitive elections in 1992, began to seek greater influence over policy-making and ramped up its controls over executive powers. As mentioned earlier, the primary functions of a regulatory state are twofold: maintaining a fair market and facilitating public welfare. It was no surprise that legislative efforts since 1992 included both aspects. Regarding the maintenance of free and competitive market, a series of laws were passed, most importantly the Fair Trade Act of 1991 and Consumer Protection Act of 1994. Regarding the facilitation of public welfare, the Environmental Impact Assessment Act of 1994 and the National Health Insurance Act of 1996 were key junctures.²⁸

Besides regulatory reforms rendered by the legislative branch, stricter controls over executive powers were also made rather explicit. Some of these legislative enactments were responses to the growing demands of the citizenry in a rapidly democratizing society. As Table 1 indicates, significant legislation included the Act on Property Declaration by Public Servants of 1993, Data Protection Act of 1995, major revisions to Administrative Appeals Act of 1998, major revisions to Administrative Litigation Act of 1998, major revisions to Administrative Enforcement Act of 1998, Government Procurement Act of 1998, and the Administrative Procedure Act (APA) of 2000.²⁹

Despite aggressive legislative efforts illustrated above, however, certain development-oriented policies and powers were maintained by government agencies. This was particularly true for industrial policies concerning high-tech and cutting-edge technologies, in areas such as nanotechnology

28. The National Pension Act has also been adopted on July 20, 2007, and will be put into effect on October 1, 2008.

29. Since 2000, another wave of new legislative enactments included the Police Power Exercise Law of 2003, Government Information Disclosure Act of 2005, Public Referendum Act of 2003, and Administrative Penalty Act of 2005.

Table 1 Major Legislation

Years	Major Incidents	Legislation
1912-1948 (1945-1948)	1945 end of Japanese colonization	Administrative Petition Act (1930) Administrative Litigation Act (1932) Administrative Enforcement Act (1932)
1949-1986	1949 Nationalist relocated to Taiwan	State Compensation Act (1980)
1987-1991	1987 Lifting the martial law decree 1988 Lifting the ban on political parties 1991 Terminating the Mobilization Period	Maintenance of Public Order Act (1991) Fair Trade Act (1991)
1992-1999	1992 First Open reelection for national representatives	Assembly and Parade Act (1992) Act on Property-Declaration by Public Servants (1993) Environmental Impact Assessment Act (1994) Consumer Protection Act (1994) Data Protection Act (1995) National Health Insurance Act (1996) Major Revisions to Administrative Appeal Act (1998) Major Revisions to Administrative Litigation Act (1998) Major Revisions to Administrative Enforcement Act (1998) Government Procurement Act (1998)
2000-2007	2000 Regime change	Administrative Procedure Act (2000) Police Power Exercise Law (2003) Public Referendum Act (2003) Campaign Finance Act (2004) Administrative Penalty Act (2005) Major Revisions to Administrative Enforcement Act (2005) Government Information Disclosure Act (2005)

Source: compiled by author.

and bio-tech.³⁰ Yet, facing a more and more assertive legislature, developmental policies were increasingly subject to formal authorization and written into law.

2. *Judicial Adjudication*

Administrative laws were clearly on the rise beginning in the 1990s as a mode of legislative control over the executive. In 1998, major revisions to the Administrative Litigation Act added new instances for administrative litigation, expanded standing to sue, increased litigation types, and most importantly, for the first time allowed public-interest litigation.³¹ These changes inevitably led to a significant increase in judicial control over administrative powers and policy making.³² A certain amount of judicial activism was observed, particularly in the early years of the Supreme Administrative Court invalidating administrative rules.³³ The Administrative Courts began to function more aggressively in reviewing agency actions. As Table 2 indicates, lumping data from three Administrative Courts in Taipei, Taichung and Kaohsiung, the rate at which courts grant relief to the individual citizens averaged around 18-20%, a sharp increase from previous years.

In 1993, the procedure of Constitutional Court was significantly revised. Most important was the lowering of the threshold for issuing constitutional interpretations: from three-fourths to two-thirds. A more open, adversary process was introduced for the Constitutional Court, allowing resolutions of constitutional controversial issues to be more publicly scrutinized. Beginning

30. In 2002, the Executive Yuan launched the “Two-Trillion and Twin-Star Industries” plan to promote newly emerging cutting-edge industries. The Industrial Development Bureau of the Ministry of Economic Affairs refer to the Two-Trillion industries as the semiconductor and flat panel display industries, whose future production value will both exceed NT\$1 trillion. The “Twin-Star industries,” on the other hand, mean the digital content and biotechnology industries, emerging stars of the future of Taiwanese economy. The Industrial Development Bureau, Promoting the “Two-Trillion and Twin-Star Industries”, <http://www.moeaidb.gov.tw/external/ctrl?lang=1&PRO=english.2007About13> (last visited Aug. 13, 2008)

31. A parallel development happened in the environmental regulatory area in the form of citizen suits. Today, most environmental statutes authorize citizen suits, allowing environmental groups to file complaints to the courts for agency inaction in enforcing environmental regulation.

32. The increase of judicial control over administrative powers is not a phenomena special to Taiwan. Rather, it has become a global trend. *See generally* THE GLOBAL EXPANSION OF JUDICIAL POWER (Neal Tate & Thorsten Vallinder eds, 1995) (arguing that the expansion of judicial power has become widespread globally).

33. *See* Jiunn-Rong Yeh & Wen-Chen Chang, *Transitional Court and the Rule of Law: On Judicial Activism of the Supreme Administrative Court in Reviewing Administrative Rules*, 14(14) JEN WEN CHI SHE HUI KE HSUEH CHI KAN 515, 525-29 (J. SOC. SCI. & PHIL.) (2002) (in Chinese).

Table2 Taiwan Administrative Court Rulings: 2000-2007

Years	Total	For Plaintiff (A)	For Agency (B)	For both in part(A)+(B)=(C)	(A)+(C)	(A)+(C) %
2000	1,247	934	307	6	940	75.4
2001	3,646	504	2,992	150	654	17.9
2002	5,274	730	4,261	283	1,013	19.2
2003	6,344	918	5,050	376	1,294	20.4
2004	6,090	648	5,056	386	1,034	16.9
2005	6,384	543	5,518	323	866	13.6
2006	6,326	651	5,419	256	907	14.3
2007(Jan-Apr)	1,954	252	1,619	83	335	17.1

Source: by author based on the Judicial Yuan Statistics, available at <http://www.judicial.gov.tw/juds/report/sg-2.htm> (last visit June 6, 2007).

in the 1990s, the ratio of unconstitutional rulings rises rather significantly. Judges, lawyers and legally trained professionals became more actively involved in many areas, extending beyond litigation.

3. *Executive Control*

Due to the focus on the maintenance of a free and fair market and its legal enforcement, legally trained experts and lawyers have a much more pronounced position in a regulatory state. This was also observed in Taiwan after 1987. Today, major offices of policy making at the highest level are all held by lawyers, including the President, Vice-President, Premier, and Ministers. It was not true, however, that legal expertise has penetrated into the entire bureaucracy. Rather, lawyers are on the surface, like a layer of chocolate frosting, with technocrats still serving as the main body of the cake.

In terms of budget allocation, while economic and industrial sectors still prevail, there has been a growing expenditure on public welfare, cultural diversity and social justice. This tendency was exemplified by the introduction of the national health insurance program after the enactment of the National Health Insurance Act, substantially shifting the focus of the regulatory state.³⁴

34. Another example is that the public expenses on social welfare by the central government increases from 9.1% in 1994 to 17.6% in 2008 of the total government budget. Directorate-General of

4. *Civil Society*

Since 1987, liberalization has led to a vibrant civil society in Taiwan. With the abrogation of outdated laws that restricted civil organization, citizen activism began to increase. The media have enjoyed freedom of press in the most profound way, in contrast to the severely controlled situation before the transition. More and more civic organizations, many of which are organized by lawyers or other professionals, enjoy full-scale freedom and organizational autonomy.³⁵ The corporatist state has begun to erode. While the old pattern of tight relationships between certain corporate organizations and the government continues, relational influence upon policy formulation has been on the decline. It should also be noted that the rise of civil society in Taiwan has gone hand in hand with globalization and the increasing density of international networks. An increasing number of civil organizations have international partners and expressed their activism beyond borders.³⁶ What effect this will have on the emerging regulatory state in Taiwan is yet to be seen.

III. ANALYZING THE TRANSITION

The two images drawn above highlight Taiwan's transition from a developmental state to a regulatory state subject to an unprecedented level of judicial scrutiny and procedural rationality in the performance of regulatory functions. However, it is not clear as to what caused a transformation of such magnitude and orientation and how we are to evaluate the features of this transformation.

Budget, Accounting and Statistics, The Information of the General Budget of the Central Government, <http://www.dgbas.gov.tw/ct.asp?xItem=3374&CtNode=1690> (last visited Aug. 13, 2008) (in Chinese).

35. The most obvious example is women's right movement. One of the pioneer organizations of the women's right movement in Taiwan, Awakening Foundation, has been participated by numerous renowned female lawyers. They not only have made extraordinary contributions to the women's right movement, but in recent years get the opportunity to occupy important government positions. For instance, famous human right lawyer Ju-Hsuan Wang, former board members of Awakening Foundation, was recently appointed to be the Minister of the Council of Labor Affairs.

36. For example, Green Party Taiwan, one of the major environmental organizations in Taiwan, regularly attends to Global Greens Congress. The most recent one was Global Greens Second Congress, held on May 4, 2008, in Sao Paulo, Brazil. For more details, Green Party Taiwan Homepage, <http://www.greenparty.org.tw> (follow "Global Green Parties" hyperlink) (last visited Aug. 13, 2008) (in Chinese).

A. *Driving Forces of the Transition: Democracy Driven*

What caused the transformation from a developmental state to a regulatory state in Taiwan? There are three possible explanations.

1. *Development Factor*

One view is that the driving force behind Taiwan's transition from a developmental state to a regulatory state was the realization that rapid growth came at the expense of the environment, social justice and, in some cases, minority rights. Once these deficiencies were realized, social forces demanded a shift toward more balanced approaches was made. Since the beginning of the 1990s, a number of social groups became outspoken in demanding a new focus on environmental and social policy.³⁷ The Democratic Progressive Party (hereinafter *DPP*) made social policy their top campaign issue for the legislative election in 1995, with significant success.

While this explanation has some power, it is incomplete. Although the DPP leaned more towards social policy when it took executive powers in 2000, the differences its policies made was relatively minor. The DPP government was less development-driven than its predecessors but demands for economic performance and growth remained still pretty strong. To be sure, there is a difference among the major political parties in their orientations towards development, but it remains rather minor. Major political parties in Taiwan remain development-driven. Even after the first change of government powers in 2000, this has still held true, with only a slightly different orientation leaning towards social policy.³⁸

2. *International Factor*

Another explanation for the transformation focuses on international factors. Like other Asian economies, Taiwan is very dependent on international trade; even more than other economies, it strives to gain international recognition because of its distinct history. Taiwan's accession to WTO required it to make significant commitments with regard to

37. The Green Party Taiwan was formatted on January 15, 1996.

38. Because of the democratic competition, issues regarding social equality and social welfare are generally more visible on political agenda. Both major parties provide their own social welfare projects during major elections. See Joseph Wang, *Deepening Democracy in Taiwan*, 76(2) PAC. AFF. 235, 245-48 (2003). However, when controlling the presidency, KMT and DPP administration are both business-friendly and has no clear left-right ideology as political parties in Western democracies tend to have.

transparency and rationality. In the process of debate over domestic legislation such as the APA and the Government Information Disclosure Act, advocates made a strong argument that Taiwan should “run with the herd” and follow global trends toward institutional reform.

This international element, however, should not be overemphasized, particularly with regard to Taiwan. It is true that many states in the region are susceptible to international pressure because of their needs for international loans and aid. But, except for a period of U.S. aid in the 1960s, Taiwan did not follow this path. It is true that the accession to the WTO –or the desire to accede– facilitated the improvement of the rule of law and administrative transparency in Taiwan.³⁹ But international pressure only focused on some policy areas, mainly involving trade-related sectors. The driving forces for the broad transformation must lie somewhere else.⁴⁰

3. *Democracy Factor*

The dominant factor underlying Taiwan’s transformation from a developmental state to a regulatory state was democratization. While Taiwan remains focused on development as a central policy goal even after the regime change in the 2000, the process of democratization has institutionally transformed the nature of the regulatory regime in the direction of transparency, participation, deliberation and partnership.⁴¹

Major legislative initiatives pushing toward transparency, participation and accountability are rooted in the period of democratization beginning in the mid 1980s. From the beginning of that period, the DPP as the main opposition force adopted an institutionalist approach by participating in elections and seeking broader representation in the Legislature, though it also used demonstrations and street protests at particular times when public mobilization was helpful. This “*reform from within*” strategy pushed the Kuomintang (hereinafter *KMT*) into a competition to enact quasi-constitutional legislative measures, such as the Administrative

39. With regard to the Administrative Procedural Act, at least some government agencies were convinced that the enactment would be helpful for international recognition.

40. Another counter argument is that international trades and capital flows are two-way street. Powerful private enterprises also have the bargaining power to oppose unreasonable regulations. See Tom Ginsburg, *Judicialization of Administrative Governance: Causes, Consequences and Limits*, 3(2) NTU L. REV. (forthcoming, Sept., 2008)

41. See JIUNN-RONG YEH, CONFRONTING ADMINISTRATIVE PROCEDURE ACT: TAIWAN’S PROCEDURAL CAPACITY-BUILDING 269-81 (2002) (in Chinese). See also Daniels J. Ronald & Michael Trebilcock, *The Political Economy of Rule of Law Reform in Developing Countries*, 26 MICH. J. INT’L L. 99 (2004).

Procedural Act, Act for Property Declaration for Public Servants, and Government Procurement Act. This dynamic explains why there has been an avalanche of legislation leading to more transparent and accountable governance in the years of democratization. Regime change in the 2000 intensified this development, but the momentum was compromised due to gridlock in the Legislature as a result of divided government.⁴²

In the general climate of democratization, courts displayed a significant change in style and activism. As the result of legislative empowerment, administrative courts and the Constitutional Court adjudicated more cases with increasing neutrality and activism, sending signals to the political sectors to improve regulatory rationality.⁴³ The general empowerment from a more liberal political environment and greater social diversity also contributed to this particular style of judicial activism. Democratic input into constitutional adjudication by the Council of Grand Justices illustrative. Elsewhere, I analyze the steady but steep rise of constitutional adjudication pushing for rule of law, political liberalization, economic liberalization and internationalization by the Council since the beginning of the democratization.⁴⁴

The role of democracy in facilitating judicialization is illustrated by Taiwan's democratic transition. Three elements account for this claim.

(a) Empowerment

First, legislative empowerment of the judiciary, directly or indirectly, through legislation in the process of democratization has helped expand the policy space for courts to adjudicate issues of regulatory relevance. The APA and enhanced systems for administrative litigation have vested courts with more power to examine the processes and substance of regulatory matters. The procedural enactments directed at transparency, participation,

42. "Sunshine Acts," including Political Party Act, Lobbying Act, Political Contribution Act, Amendment to the Act on Property-Declaration by Public Servants, etc., which are all important parts of creating a transparent government, has repeatedly been put on political agenda in major elections but has not been adopted yet.

43. Tom Ginsburg provides compelling explanations regarding why judicial empowerment often happens during the period of democratic transition. *See generally* TOM GINSBURG, JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES (2003) (arguing that politicians often see the empowerment of the judiciary as an insurance against the risk of electoral defeat); *Cf.* RAN HIRSCHL, TOWARDS JURISTOCRACY: THE ORIGINS AND CONSEQUENCES OF THE NEW CONSTITUTIONALISM (2004) (arguing that judicial empowerment are often the outcome of a deliberate strategy undertaken by hegemonic, yet threatened, political elites to preserve their hegemony, rather than of negotiations between politicians to avoid the uncertainty of democratic elections during transition).

44. *See* Yeh, *supra* note 16.

deliberation and partnership have changed the operational dynamics among bureaucrats, industry, and society involved in regulation towards more engagement in courts. For example, thanks to legislative authorization to the expansion of administrative courts in 1998, cases regarding judicial scrutiny on administrative regulation have been substantially increased.⁴⁵

(b) Trust

Second, the liberalization of regulatory processes in the wake of democratization has placed courts in a monitoring position directed to identifying and correcting regulatory errors. The burgeoning of mass media in the democratic era has established a media-court link in monitoring the regulatory state. Any media report into a possible abnormality of regulatory matters would most probably end up with a court investigation in a contested political environment. For example, in 2005, the KMT legislators challenged then-Premier Frank Chang-Ting Hsieh, a former mayor of Kaohsiung City, and the media reported extensively on the alleged abnormality of the construction project regarding Kaohsiung Transit System. As a result, courts were soon flooded with suits concerning criminal charges and legality of administrative actions.

(c) Spillover

Third, many regulatory issues tend to spill over to the courts in a contested political environment because the contending political forces could only resort to the independent third parties. In the context of Taiwan's democratic transition, courts shoulder more functions in answering to the institutional spillover of the regulatory decision-making. In recent years, for example, the courts were called upon to review the constitutionality of National Communication Commission, national finger print program and national health insurance cost allocation between local and central governments, issues could have been resolved politically but failed due to political gridlock.⁴⁶

45. See Yeh & Chang, *supra* note 33.

46. Many literatures attribute the expansion of judicial power to the conflict between or fragmentation of political powers. See generally Alec Stone Sweet, *Judicialization and the Construction of Governance*, 31 COMP. POL. STUD. 147 (1999) (arguing that the emergence of judicial governance or judicialization, is the result of continuous resolution of dyadic conflicts by a third party); GINSBURG, *supra* note 43; John Mark Ramseyer, *The Puzzling (In)Dependence of Court: A Comparative Approach*, 23 J. LEGAL STUD. 721 (1994) (arguing that the political elites keep the court independent when elections will continue indefinitely, and they have no guarantees in winning them);

B. *Analyzing the Feature of the Transition: Process Centric*

1. *Feature and Impact*

While there has been a growing trend toward judicial influence in the regulatory governance, the manner in which courts exercise their influence may have divergent impact on regulatory politics. Courts may exert their powers by strongly imposing values and opinions they hold. In so doing, the judicialization of regulatory governance would lead to an important shift in regulatory powers toward the court. Judges would not merely make a second guess to regulatory choices but, even more aggressively, substitute their own preferred policy for those of regulators. In other instances, however, courts may be more deferential, influencing policy in a more dialectic manner by providing only general policy directions or by focusing on procedural elements in regulatory process. This approach avoids the danger of courts becoming the primary regulator while still ensuring that the regulatory process become more transparent, law-abiding, democratic and even deliberative. I shall call the former version as a *thick* concept of judicialization of regulatory governance, the latter one *thin*.⁴⁷

As much evidence indicates, the judicial function in Taiwan's current transition leans towards the thin model described above. In analyzing both legislative measures and judicial rulings issues during the process of democratization, I find that both the legislature and the judiciary have exercised their increasing mandates in a process-sensitive manner. Judicial decisions have leaned towards more dialectic approaches, encouraging dialogue between divergent actors rather than substituting judicially preferred policies for those of the regulatory authorities.⁴⁸ This approach has prevented the regulatory state from becoming a judicialized state or a legislative state.

and Matthew C. Stephenson, *When the Devil Turns: The Political Foundations of Independent Judicial Review*, 32 J. LEGAL STUD. 59 (2003) (arguing that independent judicial review is founded upon ongoing political competition between risk-averse parties).

47. The thin concept of judicialization is similar to what the court in the United States did to prevent agencies from being captured by special interest during the 1960s' and 1970s'. In order to ensure fairer representation of all the affected interests in the public decisionmaking process, the court at that time tried to open up administrative procedures, require the agency to follow more procedures, and relax the standing requirement to allow more cases to be argued in the court. See Richard B. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1711-60 (1975).

48. For more examples, see discussion *infra* Part III. B. 3.

2. *Process-centric Transformation in Legislative Dimension*

Major procedural legislation enacted in the period of democratization has had a profound impact on the transformation to a regulatory state. Instead of superseding regulatory authorities, the legislature chose to establish general procedural frameworks of decision making. This was supported by a coalition of reform forces across political parties engaging in a political competition for reform. The Administrative Procedure Act, the Financial Disclosure Act, the Campaign Finance Act, the Government Procurement Act, the Environmental Impact Assessment Act, the Administrative Litigation Act, and the Government Information Disclosure Act all resulted from this procedural approach. This line of legislation, promulgated after the democratic transition, did not establish an immediate reallocation of resources. Instead, the statutes set up long-term institutional frameworks for regulatory transparency, participation and rationality. These procedural requirements entailed constraints in the delivery of regulatory functions, but they also set up a decision-making framework that facilitated the discharge of regulatory functions. With this legislative enactments, regulatory policies were made and implemented in a more transparent, participatory and deliberative fashion.

3. *Process-centric Transformation of Judicial Adjudication*

In the development of judicialized governance, courts were called upon to deal with major disputes of profound policy importance in the areas of economic establishment and social security scheme. The following discussion of relevant judicial rulings illustrates how courts resorted to procedural solutions rather than second guessing policy decisions of the bureaucracy. The three cases –The Electronic Toll Collection, Nuclear Installation, and National Health Insurance Cases– exemplify both judicialization and the process-centered approach.

(a) The Electronic Toll Collection Case

After the cabinet reshuffle in early 2006, Premier Su faced the so-called Electronic Toll Collection (ETC) controversy, a huge political case. The ETC project was funded by Build-Operate-Transfer (BOT) to provide a speedy toll system for highway users.⁴⁹ The government was subjected to media

49. Once operational, drivers will not need to stop and pay tolls, improving traffic flows, energy

criticism, however, because of an insufficient number of users and controversial installation fees. Worse yet, the Supreme Administrative Court approved a lower court ruling indicating that the public selection process was flawed and voiding the decision by the selection committee commissioning Far Eastern Electronic Toll Collection Co. (FETC) to set up the system for Taiwan Freeway Bureau. The embattled government surely did not anticipate or welcome the decision. Still, by focusing on the procedural errors in the selection process, the decision allowed the government to correct its errors by reopening the decision-making procedure. The court did not pick among rival companies, as anticipated by media, but rather provided directions to the government, defusing the political crisis at the time.

(b) The Nuclear Installation Controversy

Soon after the regime change in 2000, the DPP government announced the termination of the Fourth Nuclear Power Plant installation after a six-month period of reevaluation by a special task force. This decision led to political turmoil. The legislature, still controlled by the former ruling party, the KMT, refused to receive the Premier and threatened to recall the President. Opponents also filed a suit before the Council of Grand Justices to determine whether the decision to cancel the installation was unconstitutional. In *Interpretation No. 520*, the Council laid out four possible resolutions of the issue and demanded the executive and the legislature fulfill their respective procedural duties. The Court indicated that the executive bore a duty to report to the legislature explaining why it chose to cancel the installation,⁵⁰ but at the same time the legislature bore a duty to listen to the executive. This procedural resolution of the matter not only saved the Court from political retaliation but also facilitated political dialogues among political branches. In the end, the matter was resolved by a joint declaration between the executive and the legislature, declaring a long term goal of establishing a nuclear free homeland while continuing to build the Fourth

efficiency and air quality. In the future, drivers will not only enjoy the audio-visual equipment in the cars through the telematics system, but also improvement in car security and safety. Furthermore, many new services can be combined to offer convenience and efficiency: navigation, travel information, roadway information, mobile commerce, multimedia entertainments, and motorcade management.

50. The Council indicated that the Premier or related ministers of the Executive Yuan had to, within a reasonable time, submit a report to the Legislative Yuan and subject themselves to interpellation.

Nuclear Plant. The resolution was eventually written into law.⁵¹

(c) The National Health Insurance Divide

The establishment of the national health insurance program in 1996 was a great leap forward for social welfare policy in Taiwan. This ambitious compulsory program has in general been received positively, but the financial allocation issue has remained controversial since its introduction. One of the financial issues was the allocation of costs among central and local governments; Taipei and Kaohsiung municipal governments constantly complained about their financial burdens. Taipei municipal government refused to pay to the contributions as specified by the law, resulting in a series of administrative disputes and litigation. The tension became worse as the Mayor of Taipei and the national executive were major figures in opposing political parties, making judicial decision on the matter more politically sensitive.

In *Interpretation No. 550*, the Council of Grand Justices proclaimed that both the central and local governments bore constitutional duties of supporting a national health insurance program. The allocation of financial burdens to local governments such as Taipei City by the National Health Insurance Act was constitutional. The Court did not clearly indicate, however, how much financial cost born by local governments is constitutional. Instead of indicating any concrete amount, the Court takes a pro-negotiation approach. The Court indicated that since local governments were required to share financial costs, they must be given sufficient opportunities to participate in the course of policy formulation. Thus, the national government must discuss and consult with local governments when drafting such policies to avoid possibly unreasonable outcomes and must work out sound plans for allocation of costs. In addition, the Court also demanded that the legislature, in revising relevant laws, allow representatives of local governments to be presented as observers during relevant sessions and to express their concerns. Again, this ruling showed a consistent tendency of the Court that was unwilling to intervene in substantive policies but took a rather procedural approach.

51. The nuclear free homeland joint declaration was written into the Basic Law of the Environment. Article 23 of the Law provides that relevant authorities of the government have to development feasible implementation plan for the realization of the nuclear free homeland in Taiwan. The Executive Yuan submitted a bill for the implementation of the nuclear free home land in 2003, but it has not yet been passed by the Legislature.

C. *The Impact of the Transition*

The democracy-driven transformation from a developmental state to regulatory state may risk moving to the opposite extreme. On the one hand, the judiciary may overstep regulatory authorities by second guessing regulatory choices, seizing the momentum of judicial empowerment in the climate of democratization. On the other hand, in contrast to the development-driven regulatory regime, the legislature may exercise pork-barrel politics to supersede the executive, taking advantage of the imposition of regulatory constraints.⁵² In the process of the transformation from developmental state to regulatory state, there is a risk of domination by either the judiciary or the legislature, and neither is particularly desirable. The process-centric feature of the transformation becomes thus more significant.

The judicialization of a regulatory state may render regulatory policies subject to second-guessing by the courts at the expense of political accountability. Over-politicization, on the other hand, would turn a developmental state into a bargaining game with politicized interventions in bureaucratic justice. And last but not the least, the capture of regulatory governance may risk regulatory policies falling into the hands of the regulated, primarily industry.⁵³ In the transitional move to a regulatory state, it is important to address demands for social reforms while at the same time preserving spaces for policy formation. As the experience of Taiwan has shown, a democracy-reinforcing, process-centric pattern may be a better model worthy of special attention.

52. The danger that Congress might violate its role as a guardian of public interest has long been observed. Regarding how the regulated, interest groups, influences the regulator, traditional capture theory applies the metaphor of iron-triangle, in which Congress, the bureaucracy and interest groups interact with each other and end up making policy decisions that favors special interests. *See generally* GRANT MCCONNELL, *PRIVATE POWER AND AMERICAN DEMOCRACY* (1966) (arguing that the American culture and governmental system make the public policy making easily captured by private interest groups). Criticizing the capture theory as being too vague, Richard Posner later proposed the economic theory of regulation, in which the capture metaphor is replaced by supply and demand. Different actors, including legislators, agencies, and interest groups are all economically rational and intend to pursue their own, not necessarily special interests', best interests. *See generally* Richard A. Posner, *Theories of Economic Regulation*, 5(2) *THE BELL J. OF ECON. & MGMT. SCI.* 335, 341-44 (1974) (arguing for the economic theory of regulation as being more scientific and evaluable than the vague capture theory). Both theories imply the danger that Congress might favor special interests rather than pursue the public interest.

53. *See supra* note 52 and accompanying text.

IV. CONCLUSION

In this paper, I analyze the driving forces for the transformation in Taiwan, after presenting the dynamics of the transition from a developmental state to a regulatory state. I argue that Taiwan has indeed transitioned from a developmental state to a regulatory state with increasing procedural rationality and substantive legal controls over the regulatory regime. This transition is, however, largely democracy-driven. Given (or because of) this democracy-driven transition, certain growth-driven tendencies have continued and in some cases become even more entrenched.

The transition took place in Taiwan not as a result of explicit government policies, but rather as an inevitable consequence of democratization. Major legislation facilitating the forming of a regulatory state was introduced in the backdrop of democratization in the 1990s in parallel with certain pressures from international network. Increasing judicial controls over regulatory matters were made possible on the one hand by legislative enactments and on the other by democratization. More importantly, when looking into the dynamics of the regulatory state in Taiwan, institutional constraints on the regulatory state bears strong procedural nature as demonstrated by both major legislation and court rulings. This process-centric feature enjoys the potency of developing a dialectic regulatory environment that may possibly prevent the risk of judicialization while reinforcing more open, deliberative democratic governance.

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